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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,607	02/27/2004	Masakazu Bamba	FUSKA 21.005	9057
26304	7590	02/04/2009	EXAMINER	
KATTEN MUCHIN ROSENMAN LLP 575 MADISON AVENUE NEW YORK, NY 10022-2585			JEAN, FRANTZ B	
ART UNIT	PAPER NUMBER			
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/789,607	<b>Applicant(s)</b> BAMBA, MASAKAZU
	<b>Examiner</b> Frantz B. Jean	<b>Art Unit</b> 2454

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 November 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-3,5-12 and 14-19 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-3,5-12 and 14-19 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 9/25/08

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

This office action is in response to applicant's response filed on 11/12/08. Claims 1-3, 5-12, and 14-19 are pending in the application.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-12, and 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong et al. hereinafter Wong US publication number US 2003/0193898 A1 in view of Zaumen et al. 6,658,479 (Zaumen) and Yagyu US PGPUB number 20030174644.

As per claims 1 and 19, Wong teaches a communication apparatus in a communication network in which a plurality of routes can be set with respect to a destination (see fig 1), comprising: a line condition acquiring unit that acquires line condition information on a communication condition of a communication line in each route (see fig 7; abstract; par 0025); a communication cost calculating unit that calculates a communication cost of each route (fig 1; par 0103-0104; par 0164-0182), based on the line condition information in the route; and a route selecting unit that selects a route from the plurality of routes based on the communication cost calculated (fig 1; par 0076-0087). Although Wong details on a path computation processor (12), which informs about the link and the network, Wong fails to explicitly disclose a line

condition that includes information about the presence or absence of a failure in the communication line. This feature is well Known and apparent in the art of routing in a network as shown by Zaumen (col. 2 lines 28-46, col. 3 line 66 to col. 4 line 13; and col. 6 lines 10-26). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Zaumen's feature to Wong's method to better determine the best and cheapest communication route. One skill artisan at the time of the invention would be motivated to do so to facilitate communication while maintaining a low effective cost in the system. Wong and Zaumen fail to teach determining a type of failure from a plurality of types of failures and communicating cost based on the determined type of failure. Yagyu teaches these features (see Yagyu par 0010). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Yagyu features into Wong and Zaumen because they would facilitate low cost communication in regard to different types of failure in the paths while maintaining the system integrity.

As per claim 2, Wong-Zaumen teaches a communication apparatus according to claim 1, further comprising a communication cost outputting unit that outputs the communication cost to outside (Wong, par 0146-0151 ).

As per claim 3, Wong-Zaumen-Yagyu teaches a communication apparatus according to claim 1, wherein the line condition acquiring unit acquires a service condition information on a service condition of the communication line, and the communication cost calculating unit calculates the communication cost based on the

service condition information (see Wong par 0164-0181; Zaumen col. 2 lines 28-46, col. 3 line 66 to col. 4 line 13; and col. 6 lines 10-26).

As per claim 5, Wong-Zaumen-Yagyu teaches a communication apparatus according to claim 1, wherein the line condition acquiring unit acquires reserve line information, that is information about presence or absence of a reserve line in the communication line, and if the reserve line exists, the communication cost calculating unit calculates the communication cost based on a type of the reserve line (par 0026, 0029, 0142 and 0197; alternate path and second explicit route; Zaumen, col. 2 lines 28-46, col. 3 line 66 to col. 4 line 13; and col. 6 lines 10-26).

As per claim 6, Wong-Zaumen-Yagyu teaches a communication apparatus according to claim 1, wherein the line condition acquiring unit acquires the line condition information at regular intervals (Wong, par 0088; determine paths more quickly).

As per claim 7, Wong-Zaumen-Yagyu teaches a communication apparatus according to claim 1, further comprising an inputting unit to input a communication of each route, wherein the route selecting unit selects the route from the plurality of routes based on the communication cost input (Wong, fig 1; par 0076-0087).

As per claim 8, Wong-Zaumen-Yagyu teaches a communication apparatus according to claim 1, further comprising: a communication cost acquiring unit that acquires a communication cost of each route from outside, wherein the route selecting unit selects the route from the plurality of routes based on the communication cost acquired (Wong, fig 1; par 0076-0087).

As per claim 9, Wong-Zaumen-Yagyu teaches a communication apparatus according to claim 1, further comprising a storage unit to store the communication cost calculated (Wong, par 0104; memory means).

Claims 10-12 and 14-18 are method claims of the apparatus claims 1-9. They contain the same limitations. Therefore, they are rejected under the same rationale.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz B. Jean whose telephone number is 571-272-3937. The examiner can normally be reached on 8:30-6:00 M-f.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on 571-272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Frantz B. Jean/  
Primary Examiner, Art Unit 2454